

James E. Horton
10302015
814 North Street
Woodland, CA 95695
Email address: jakovos@gmail.com
In Pro Per

FILED:

SUPERIOR COURT OF CALIFORNIA
COUNTY OF YOLO

PEOPLE OF THE STATE) Dept. 10
CALIFORNIA,) Case No.: 130003628
Plaintiff,) NOTICE OF MOTION TO
vs.) DISMISS BECAUSE OF DENIAL
James E. Horton,) OF RIGHT TO SPEEDY TRIAL
Defendant)
)

TO THE ABOVE ENTITLED COURT, AND TO THE DISTRICT ATTORNEY OF YOLO COUNTY, STATE OF CALIFORNIA:

PLEASE TAKE NOTICE that on 11172015, in Department 10 at 0930, or as soon thereafter as the matter may be heard, the defendant, James E. Horton, will move the Court to dismiss the accusatory pleading filed herein on the grounds that the prosecution has unreasonably delayed, violating the defendant's right to a speedy trial guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, section 15 of the California Constitution. The delay was more than 28 months from arraignment on 09122013. This motion will be based on the attached memorandum of points and authorities, attached declaration, evidence taken at the hearing on this motion, argument at that hearing.

Date: _____
submitted,

Respectfully

Persona Propria

James E. Horton, In

MEMORANDUM

SUMMARY OF ARGUMENT

Defendant's fundamental right to a speedy trial has clearly been prejudiced by procedural, incompetent inefficiencies so cumulative, they betray extreme Vindictive, Discriminatory, Retaliatory and Malicious Prosecution – Prosecutorial Harassment while Defendant is in a conflict with Agents of the State. In defense, just a sample of the numerous, time- delaying, prejudicial errors shall follow below.

FACTS AND ANALYSIS

On 12032013, Defendant, James E. Horton, presented in open Court, his Motion to Waive Right to Counsel and Proceed Pro Per (*Farettta Motion* pursuant to *Farettta v California* (1975) 422 US 806, 835, 45 L Ed 2d 562, 581, 95 S Ct 2525). Thereby, he raised issues of substantial conflict due to incompetent/ineffective counsel of his current counsel (Public Defender) and his need to self-represent averring: at his first and only allowed appointment on 11012013, Public Defender denied him consultation interview, only read to him the police reports; then, upon them solely, communicated strategy to "raise doubt" as to Defendant's "competence to stand trial!"

On 12032013, in open hearing, Defendant, motioned to present a *Farettta Motion* and Motion to Set Aside the Information Under Penal Code Section 995 Regarding Charge of Violation of CA PC 148(A)(1) in conjunction. Upon commencing to oral argue in support, Public Defender abruptly interjected, defensively interrupting in his place, to affect that Defendant was bringing a "Marsden Motion" seeking to terminate his counsel in order to present a "995 motion." Relying on counsel's statements, Judge Samuel McAdam set a "Marsden" hearing for 12062013. In open Court, Defendant orally challenged objecting that the motion was, in fact, a *Farettta Motion*. In response, the Judge sustained: 1) it was a "Marsden Motion," 2) and also date for hearing. (See Defendant's)

Thereafter, at the closed Marsden hearing on 12062013, Judge Samuel McAdam: 1) questioned Defendant concerning his claim of substantial conflict of interest with counsel, 2) inquired concerning parties' relative experience in law practice as a discretionary factor to determine both the effectiveness of counsel (as a Marsden issue), and (as verbalized) Defendant's competence to self-represent (as a *Farettta* issue), 3) examined concerning Public Defender's basis for "doubt" of Defendant's competence, and to "stand trial!" Judge denied Defendant's motions, then set a hearing pursuant to PC1368 prejudicial to client, favoring Public Defender as an "agent of the state." (See Defendant's *Farettta* Motions).

Since self-representation is a guaranteed right with presumption, the court prejudiced Defendant by conducting a Marsden hearing in response to his *Farettta* motion. "A criminal defendant has a right to represent himself at trial... and trial court must grant defendant's requests if three conditions are met: 1. Defendant must be mentally competent and make his request knowingly and intelligently 2. His request must be unequivocal 3) must make his request within a reasonable time before trial..." (*People v. Welch* (1999) 20 cal. 4th 701). Defendant, and as exemplified in open court and by motion practice, had, in fact, met all three criteria.

In *People v. Gonzalez* (2012) CA4th 724, Defendant's request to "go pro per" did not require Marsden hearing since right to waive right to counsel and self-represent was guaranteed irregardless. He self-represented against and was convicted of a murder charge. Upon appeal, Gonzalez argued "he did not effectively waive his right to counsel under *Farettta v. California* since "his request to go pro per was 'a hybrid Marsden/Farettta motion,'" and therefore the court should have conducted a "hearing as provided for by *Marsden*, supra, 2 Cal. 3d 118..." The court held: "When a defendant claims ineffective representation by appointed counsel and asks the court to substitute another appointed attorney, the trial court must allow the defendant to explain his

request and state specific reasons why current counsel is not providing adequate representation. The defendant, however, must give 'at least some clear indication that he wants a substitute attorney as to require the court to conduct a Marsden hearing,' the court did not have such duty (*People v. Burton* (1989) 48 Cal. 843). Furthermore, "The failure to conduct a marsden hearing did not render ineffective Gonzalez's waiver of counsel under Faretta" (*People v. Gonzalez* (2012) 210 CA4th 724).

On 12202013, Defendant sought "to rectify error with re-filing of Faretta motion since, "with a 'Faretta motion,' the criminal defendant is seeking permission to proceed without a lawyer at all" (*People v. Percelle* (2005) 126 Cal. App. 4th 164). (See Defendant's Motion to Set Aside the Information filed on 12202013).

PREJUDICIAL DELAY BY MULTIPLE CONTINUANCES OF 1538.5/995 HEARINGS RESULTING IN HEARING OVER 4 CALENDAR DATES

Upon Defendant's Motion to Suppress Evidence filed with the Court on 0324201, a PC section 1538.5 hearing was set for 04192014. This proceeding took place over for hearing dates (04192014, 05132014, 05271014, and 06172014) since each hearing was repeatedly continued in the prejudicial interest that "police needed to go to lunch." Procedural actions grossly prejudiced Defendant in that: his closing argument was delayed for two months (until 06172014), giving prosecution unfair and inordinate time to prepare after each cross-examination. Thereby, fundamental due process rights of defendant were prejudiced by this procedural misconduct. Furthermore, defendant's right to speedy trial was prejudicially delayed for two months by this set of hearings for one proceeding alone.

DEFENDANT PREJUDICED BY NUMEROUS DELAYS RECEIVING TRANSCRIPTS OF 1538.5/995 HEARINGS

Between 05082014 and 01142015, Defendant, in diligent full faith, filed multiple requests with the Court for transcripts of combined hearings upon his Motion to Suppress Evidence pursuant to P.C. § 1538.5 and his Motion to Set Aside the Information pursuant to P.C. § 995. (The latter was intended to be a Motion to Dismiss upon denial of a fundamental right: "The information or indictment lacked reasonable or probable cause.") Defendant required transcripts to appendix his Writ of Prohibition in lieu of denial of aforementioned motions and, also, for citation in memoranda attached hereto. Defendant hereby asserts with support following: The Court delayed serving requested transcripts with excessive incompetent inefficiency as prejudicial harassment with procedure – action delayed Defendant's ability to file Writ of Prohibition appealing denial of Motion pursuant to California Penal Code 995 within 15 day deadline pursuant to PC § 999a.

Subsequent to proceedings heard upon his 1538.5 and 995 motions, Defendant filed multiple Requests for transcripts with fee waivers on the following dates: 05082014, 06162014.

On 08142015, by necessity, he filed request for time Extension to file Appellant's Opening brief and Writ of Prohibition in lieu of delays claiming:

Transcripts are necessary for Appellant to prepare Writ of Prohibition appealing denial of Motion pursuant to California Penal Code 995 and Appellant's Opening Brief subsequent to Notice of Appeal responsive to denial of Motion to Suppress Evidence pursuant to California Penal Code 1538.5 and California Penal Code Section 995 held on 04292014, 05132014, 05272014, and 06172014.

On 08182015, Judge Samuel T. McAdam denied, "Denied. The request is not ripe. The time for filing writ and briefs will be triggered by the completion of preparation of transcript and notice by briefing schedule. It is so ordered."

On 08222014, Defendant sent an online complaint to the Court Reporters Board of California to complain as follows:

On 08142014, I had to file a time extension due to delay of transcripts from Dawn Timberlake, court reporter. The court is claiming her delay as an excuse to not produce transcripts which I have ordered, and the court reporters office has ordered as necessary to include with a Notice of Appeal. It included a declaration attached averring:

On 05202014, I filed a Request to waive Court Fees for transcripts with the clerk of courts which was granted. Subsequently, on 05082014, I filed a request for transcripts of all proceedings recorded specifically. Upon attempting fee waiver did not cover copies of transcripts. I was denied copies of the transcripts. Therefore, on 05152014, I filed a Request to Waive

Additional Court Fees with the first waiver with a denial with additional comment: "The court already allowed a waiver for transcripts of 1538.5 hearings and those are the only ones recorded." Since this time, I have made several good faith efforts to acquire the receiving the full set of transcripts of four hearings pursuant to California Penal code 1538.5 and 995. I still have the full set of transcripts to these hearings...

Upon finally receiving the final transcript of hearings at issue, Defendant discovered it was clearly strewn with extremely incompetent errors prejudicing him. Therefore, further procedural delays were necessitated; on 10032014, Defendant filed a Declaration and Settled Record on Appeal averring:

On 09052014, finally I received a copy of the transcript of the proceeding on 06172014. Later, I discovered it is strewn with errors misrepresenting my oral argument significantly. Therefore, from my prepared notes which I read from at the proceeding, I hereby offer to present an augmentation of the opening argument portion of the said record with accompanying DECLARATION AND SETTLED RECORD ON APPEAL.

Wherefore, Appellant hereby prays the Court for time extension to file a Writ of Prohibition and Appellant's Opening Brief subsequent to Notice of Appeal responsive to denial of Motion to Suppress Evidence pursuant to California Penal Code 1538.5." (See Defendant's Motion Requesting Time Extension filed on 11272014.)

On 11272014, after prolonged review by an attorney department (as Defendant had been informed by clerks of Court at numerous visits to check on status in full faith effort), aforementioned motion was prejudicially denied.

Defendant filed a Second Time extension on 11272104, with a on the following basis:

"On 05082014, Appellant, James E. Horton, submitted a request for transcripts of proceedings pursuant to California Penal Code Section 1538.5 and California Penal Code Section 995 held on 04292014, 05132014, 05272014, and 06172014.

Despite several good faith efforts to acquire the relevant transcripts, multiple administrative delays at the clerk of courts and at the court reporter's office have delayed appellant's receipt of transcripts. Appellant has not yet received full set of transcripts ordered.

In conclusion, procedural delays and incompetencies of the Court relevant to Defendant's right to receive transcripts Prejudiced his right to speedy trial. Defendant obstructed ability to file his Writ of Prohibition aforementioned 7 months beyond 15 day deadline pursuant to PC section 999a. Defendant filed a last Request for Time Extension on 012013 which granted extension 02092015.

DEFENDANT IS PREJUDICED BY PROLONGED RESTRAINT OF LIBERTY TO AN AREA

In conclusion, proceeding on this action would not serve justice, but only prejudice the Defendant in that the delays are causing undue disruption to his life without justifiable cause. At time of arrest, defendant did not have outstanding warrants, nor a criminal record. Charge is minor based on minimal evidence. As a matter of fact, the first charge – stemming from an anonymous, citizen informant's dispatch call – was dropped having no merit

before arraignment. Defendant is not even resident of area but was traveling through at time of incident at question. He intends to move on while his liberty is restrained to the area, by inordinate delay, as an indigent without income. Furthermore, Defendant is forced by necessity to self-represent (as described in previous Faretta Motion) in such circumstances – his opportunities for employment are disrupted, his associations (such as Church affiliations) are curtailed. The drawout procedural harassments, as above, are prejudicing the defendant with excessive anxiety inducement. As Defendant has asserted in previous motions, and hearings upon them: prosecution is based on a pretextual false-arrest as retaliatory, vindictive prosecution; defendant, also, has presented supported evidence (and as to motive) in these motions and hearings as well. Zealous prosecution would serve to only confirm Defendant's assertions concerning a pretextual arrest with motives toward malicious, retaliatory, prosecutorial misconduct. Also, it would belabor the "Court with unnecessary expense of time and resources – and over minor charge with little merit. (See Defendant's Motion to Set Aside the Information and Memorandum of Points and Authorities.)

According to Serna, "Right to speedy trial protects criminal defendant against oppressive pretrial incarceration, anxiety, concern and disruption to his everyday life" (*Serna v Superior Court* (1985) 40 C3d 239). Therefore, would be in the interest of justice for the Court to dismiss the charge.

-
-
-
-
-

RULE OF LAW

Postaccusation delay is covered by article I, section 15 of the California Constitution: "[I]n criminal prosecutions, in any event whatever, the party accused shall have the right to a speedy and public trial..." (See also Penal Code section 686.) The California provision for a speedy trial "reflects the letter and spirit of' the Sixth Amendment to the United States Constitution..." (*People v Wilson* (1963) 60 C2d 139, 144 n2, 32 CR 44.)

The right to a speedy trial is a "fundamental right granted to the accused and... the policy of the law since the time of the promulgation of the Magna Carta and the Habeas Corpus Act." (*Harris v Municipal Court* (1930) 209 C 55, 60, 285 P 699.) In an effort to implement this constitutional right, the California legislature has enacted a number of specific provisions providing certain time limits. However, the constitutional guarantees are self-executing, and specific legislation is not necessary to bring into effect the rights guaranteed thereunder. (*Harris v Municipal Court* (1930) 209 C 55, 60, 285 P 699.) Consequently, it remains for the courts to determine whether a defendant's constitutional rights have been impinged, even though no specific statute may have been violated. (*Jones v Superior Court* (1970) 3 C3d 734, 91 CR 578; *Barker v Municipal Court* (1966) 64 C2d 806, 51 CR 921; *Rost v Municipal Court* (1960) 184 CA2d 507, 7 CR 869.)

Pursuant to California Penal Code § 1382(a)-(B)(3), "The court, unless good cause to the contrary is shown, shall order the action to dismissed in the following cases: ... Regardless of when the complaint is filed, when a defendant in a misdemeanor... case is not brought to trial within 30 days after he or she is arraigned, whichever occurs later..."

In the present case, the Defendant was arraigned on 092013. Defendant's pretrial, due to inordinate delays by the Court, is currently set for 11032015.

THE DELAY IN THIS CASE WAS SUFFICIENTLY PREJUDICIAL TO REQUIRE A HEARING

At a certain point, delay in prosecution becomes so prejudicial that the "defendant need not establish actual prejudice as a prerequisite to a hearing" at which the trial court must weigh this prejudice against the justification offered by the People. (*Serna v Superior Court* (1985) 40 C3d 239, 252, 219 CR 420; *Stabio v*

Superior Court (1994) 21 CA4th 1488, 26 CR2d 615; Barker v Wingo (1972) 407 US 514, 92 S Ct 2182, 33 L Ed 2d 101; Harris v Municipal Court (1930) 209 C 55, 285 P 699; Guttermann v Municipal Court (1930) 209 C 65, 285 P 703.) This is sometimes called "presumed prejudice," as: "...A delay of more than one year between the arrest and prosecution in a misdemeanor charge with a one-year statute of limitations, is unreasonable and prejudice is presumed, with dismissal under Serna being constitutionally compelled in the absence of a demonstration of good cause for the delay...." (Serna v Superior Court (1985) 40 C3d 239).

THE PROSECUTION FAILED TO PROCEED WITH SATISFACTORY DILIGENCE IN PROSECUTING THIS OFFENSE

The prosecution has a duty to employ all reasonable means to bring an accused promptly to trial. (Rice v Superior Court (1975) 49 CA3d 200; Plezbert v Superior Court (1971) 22 CA3d 169; Jones v Superior (1970) 3 C3d 734). In both Jones and Rice it was held that there is "no requirement that an accused must seek out the police and invite arrest" (Jones, *supra*). And in Sykes, the California Supreme Court held that "a speedy trial requires prompt action upon the part of all who are officially concerned, at the least, to the extent that adjudication of a defendant's rights shall not be stifled by the procrastination of officials" (Sykes v Superior Court (1973) 9 C3d 83).

Whereas Defendant's pretrial, with excessively prejudicial, procedural inefficiency, is delayed until 11032015 hereunto; effectively, Defendant's right to a speedy trial under both the Constitutions of the United States of America and of California respectively since Defendant was prejudiced by the lengthy, cumulative delays. Therefore, Defendant respectfully motions this Court to dismiss the accusatory pleading.

Date:_____

Persona

James E. Horton, In Propria

DECLARATION OF JAMES E. HORTON
IN SUPPORT OF MOTION TO DISMISS

1. I, James E. Horton, am the Defendant in the above entitled case.

2. I declare under penalty of perjury the following:

Defendant's fundamental right to a speedy trial has clearly been presumptively prejudiced by procedural incompetence and inefficiency rising to Prosecutorial Harassment in that: A HEARING WAS SET FOR A FARETTA MOTION TAKEN FOR A MARSDEN MOTION, MULTIPLE CONTINUANCES OF 1538.5/995 PROCEEDING RESULTED IN ONE HEARING TRIED OVER 4 CALENDAR DATES, THE DEFENDANT WAS PREJUDICED BY NUMEROUS DELAYS RECEIVING TRANSCRIPTS OF 1538.5/995 HEARINGS, AND THE DEFENDANT IS PREJUDICED BY PROLONGED RESTRAINT OF LIBERTY TO AN AREA.

3. At all times from the alleged commission of this offense, I was indigent in Woodland, CA.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Date: _____

James E. Horton, In Propria

Persona

DECLARATION OF PERSONAL SERVICE

I, the undersigned, declare that I am a citizen of the United States, over the age of eighteen years, and not a party to the within action. My place of employment is 814 North Street, Woodland, California.

On _____, I deposited in the United States mail at the Post Office in Woodland, CA, a copy of the attached MOTION TO DISMISS BECAUSE OF DENIAL OF RIGHT TO SPEEDY TRIAL in a sealed envelope, with postage fully prepaid, by certified mail addressed to the person named below:

DISTRICT ATTORNEY'S OFFICE

301 Second Street

Woodland, CA 95695

Executed under penalty of perjury on _____, in Woodland, California.
